

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
Comcast Cablevision Corporation of California, LLC)	CSR-5868-A
)	
Petition For Modification of the DMA Market of)	
Television Broadcast Station KPTF-TV)	
Farwell, Texas)	

MEMORANDUM OPINION AND ORDER

Adopted: August 5, 2002

Released: August 7, 2002

By the Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Comcast Cablevision Corporation of California, LLC (“Comcast”) filed the above-captioned Petition for Special Relief seeking to modify the designated market area of Station KPTF-TV, Farwell, Texas to delete the communities located in Tucumcari City and unincorporated areas of Quay County, New Mexico (“Comcast Communities”). KPTF-TV, an affiliate of Prime Time Christian Broadcasting, Inc. (“PTCB” or “KPTF-TV”), filed an Opposition to which Comcast replied.¹ After examining the record, we grant Comcast’s request.

II. BACKGROUND

2. Pursuant to Section 614 of the Communications Act and the rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992* (“*Must Carry Order*”), commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station’s market.² A station’s market for this purpose is its “designated market area,” or DMA, as defined by Nielsen Media Research.³ A DMA is a

¹PTCB filed a Rebuttal to Comcast’s Reply to Opposition. Comcast filed a Motion to Strike PTCB’s Rebuttal to Reply to Opposition. We grant Comcast’s Motion to Strike because PTCB failed to articulate the extraordinary circumstances required to support its consideration under 47 C.F.R. § 76.7(d). In any event, PTCB’s Rebuttal did not raise any new arguments.

²8 FCC Rcd 2965, 2976-2977 (1993).

³Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station’s market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. *See* 47 U.S.C. § 534(h)(1)(C). Section 76.55(e) requires that a commercial broadcast television station’s market be defined by Nielsen Media Research’s DMAs. *See Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, 14 FCC Rcd 8366 (1999)(“*Modification Final Report and Order*”).

geographic market designation that defines each television market exclusive of others, based on measured viewing patterns. Essentially, each county in the United States is allocated to a market based on which home-market stations receive a preponderance of total viewing hours in the county. For purposes of this calculation, both over-the-air and cable television viewing are included.⁴

3. Under the Act, however, the Commission is also directed to consider changes in market areas. Section 614(h)(1)(C) provides that the Commission may:

with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's television market to better effectuate the purposes of this section.⁵

In considering such requests, the 1992 Cable Act provides that:

the Commission shall afford particular attention to the value of localism by taking into account such factors as –

- (I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community;
- (II) whether the television station provides coverage or other local service to such community;
- (III) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community;
- (IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.⁶

The legislative history of the provision states that:

where the presumption in favor of [DMA] carriage would result in cable subscribers losing access to local stations because they are outside the [DMA] in which a local cable system operates, the FCC may make an adjustment to include or exclude particular communities from a television station's market consistent with Congress' objective to ensure that television stations be carried in the area in which they serve and which form their economic market.

* * * *

[This subsection] establishes certain criteria which the Commission shall

⁴For a more complete description of how counties are allocated, *see* Nielsen Media Research's *Nielsen Station Index: Methodology Techniques and Data Interpretation*.

⁵47 U.S.C. §534(h)(1)(C).

⁶*Id.*

consider in acting on requests to modify the geographic area in which stations have signal carriage rights. These factors are not intended to be exclusive, but may be used to demonstrate that a community is part of a particular station's market.⁷

In adopting rules to implement this provision, the Commission indicated that requested changes should be considered on a community-by-community basis rather than on a county-by-county basis, and that they should be treated as specific to particular stations rather than applicable in common to all stations in the market.⁸

4. In the *Modification Final Report and Order*, the Commission, in an effort to promote administrative efficiency, adopted a standardized evidence approach for modification petitions that requires the following evidence be submitted:

(A) A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, cable system headend locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market.

(B) Grade B contour maps delineating the station's technical service area and showing the location of the cable system headends and communities in relating to the service areas.

Note: Service area maps using Longley-Rice (version 1.2.2) propagation curves may also be included to support a technical service exhibit.⁹

(C) Available data on shopping and labor patterns in the local market.

(D) Television station programming information derived from station logs or the local edition of the television guide.

(E) Cable system channel line-up cards or other exhibits establishing historic carriage, such as television guide listings.

(F) Published audience data for the relevant station showing its average all day audience (i.e., the reported audience averaged over Sunday-Saturday, 7 a.m., or an equivalent time period) for both cable and noncable households or other specific audience indicia, such as station advertising and sales data or viewer contribution records.¹⁰

⁷H.R. Rep. 102-628, 102d Cong., 2d Sess. 97 (1992).

⁸*Must Carry Order*, 8 FCC Rcd at 2977 n. 139.

⁹The Longley-Rice model provides a more accurate representation of a station's technical coverage area because it takes into account such factors as mountains and valleys that are not specifically reflected in a traditional Grade B contour analysis. In situations involving mountainous terrain or other unusual geographical features, Longley-Rice propagation studies can aid in determining whether or not a television station actually provides local service to a community under factor two of the market modification test.

¹⁰47 C.F.R. §76.59(b).

Petitions for special relief to modify television markets that do not include the above evidence shall be dismissed without prejudice and may be re-filed at a later date with the appropriate filing fee. The *Modification Final Report and Order* provides that parties may continue to submit whatever additional evidence they deem appropriate and relevant.

III. DISCUSSION

5. KPTF-TV, is an independent broadcast station that operates as a commercial religious television station. It is licensed to Farwell, Texas, which is assigned to the Amarillo, Texas DMA.

6. Comcast's Tucumcari system serves the communities of Tucumcari and unincorporated areas of Quay County. The City of Tucumcari is located half-way between the cities of Albuquerque, New Mexico and Amarillo, Texas, on the border between the Amarillo, Texas DMA and the Albuquerque, New Mexico DMA. Farwell is located 102 miles Southeast of Tucumcari on the edge of the Amarillo, Texas DMA and the Lubbock, Texas DMA.¹¹ The average distance between the station's transmitter and the Comcast Communities is 98 miles. In support of its request, Comcast argues that, although its cable system operates in the Amarillo, Texas DMA, which includes KPTF-TV, the statutory factors considered in market modification cases support deletion of the Comcast Communities from KPTF-TV's DMA.

7. We now consider the statutory factors based upon the facts supplied by the parties. The initial factor is "whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community."¹² Since it began operating in April 2001, KPTF-TV has not been carried in the Comcast Communities. In considering this statutory factor, we must determine the circumstances contributing to this lack of historic carriage.

8. While admitting that Comcast has never carried its station and that the station's Grade B contour does not encompass the communities at issue, KPTF-TV states that it is closer than the nine other broadcast stations carried by Comcast, none of which places a Grade B contour over Tucumcari.¹³ Thus, KPTF-TV maintains that the fact that no broadcast stations are "local" to Tucumcari undermines the applicability of the historic carriage factor.¹⁴

9. KPTF-TV also asserts that based on data contained in the Television and Cable Factbook 2002 ("Factbook"), 56 of 57 cable systems in the Amarillo DMA are either currently carrying KPTF-TV (since May 2001) or are committed to carrying KPTF-TV and are awaiting necessary equipment.¹⁵ Specifically, KPTF-TV states that 44 cable systems are already carrying KPTF-TV, and an additional 12 systems are preparing to do so. KPTF-TV argues that based on its current and future carriage, the Act's historical carriage factor is "misleading and should be ignored."¹⁶ KPTF-TV claims that only 6 of the 56 cable systems carrying or planning to carry KPTF-TV are located inside KPTF-TV's Grade B Contour.¹⁷ KPTF-TV asserts that it is the only Amarillo DMA commercial independent station that Comcast is not carrying. In response to PCTB's assertion that 44 cable systems were currently carrying KPTF-TV's

¹¹Comcast Petition at 3.

¹²47 U.S.C. §534(h)(1)(C).

¹³PTCB Opposition at 8.

¹⁴*Id.*

¹⁵*Id.* at 4.

¹⁶*Id.* at 5.

¹⁷*Id.* at 5.

signals, Comcast stated that it discovered that at least 29 of the cable systems in the Amarillo DMA do not carry KPTF-TV's signal.¹⁸ Furthermore, Comcast maintains that the geographic distance between the Comcast Communities and KPTF is the primary reason it does not carry the station.

10. We are not persuaded by KPTF-TV that we should discount entirely the fact that KPTF-TV has not historically been carried by the Comcast Communities. We reject KPTF-TV's claim to prospective carriage as a replacement for historic carriage. We have historically rejected relying exclusively on prospective or potential carriage because it is not a reliable indicator of a station's impact within a market. Nevertheless, given that the station has only been on the air for sixteen months, we do not attribute significant weight to the historic carriage factor.

11. The second factor to consider is "whether the television station provides coverage or other local service to the community."¹⁹ We find that this factor weighs in favor of granting Comcast's request. First, Comcast offers the station's program schedule as evidence that the station's programming is identical to the Prime Time Christian Broadcasting Network's national feed and does not include any programming local to the Comcast Communities.²⁰ KPTF-TV disputes Comcast's assertion that the station provides no local programming, asserting that its two hour nightly program called "Light of the Southwest" focuses on men, women, and groups from local communities in the Amarillo DMA.²¹ We find that this generalized programming is insufficient to establish "coverage of or local service to Comcast's Communities." KPTF-TV's lack of nexus with the Comcast Communities is further demonstrated by the failure of local print sources to list KPTF-TV in the television listing for the Comcast Communities.²²

12. Comcast also points out that it is undisputed that KPTF-TV does not place a Grade B contour over the Comcast Communities. As we have previously stated, lack of Grade B coverage is a valid indicator of no local service in market modification cases.²³ KPTF-TV argues that its ability to deliver a good quality signal via satellite should substitute for its lack of Grade B coverage. We note, however, that a station's ability or lack of ability to deliver an adequate signal by satellite is not determinative in a modification proceeding.²⁴ Stations are entitled to employ alternative forms of signal delivery, other than over-the-air, particularly when they wish to ensure the receipt of a good quality signal, but such methods are not considered to be indicators of local service.²⁵

13. The third factor is "whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community."²⁶ Comcast states that it carries many other television stations that serve the Comcast Communities with 145 hours per week of local programming, including local news,

¹⁸Comcast Reply at 10.

¹⁹47 U.S.C. §534(h)(1)(C).

²⁰Comcast Petition at 5 - 6 and Exhibit D.

²¹PTCB Opposition at 9.

²²Comcast Petition at 7.

²³*See Comcast Cablevision of New Mexico, Inc.* 16 FCC Rcd 12440 (2001).

²⁴*See Comcast Cablevision of New Mexico, Inc.* 15 FCC Rcd 7922 (2000).

²⁵*See Dynamic Cablevision of Florida, Ltd. et al.*, 12 FCC Rcd 9952 (1997).

²⁶47 U.S.C. §534(h)(1)(C).

sports, and public affairs programming.²⁷ KPTF-TV questions the accuracy of Comcast's assertion, but failed to present any contradictory evidence. Thus, this factor weighs in favor of market modification.

14. The fourth factor is "evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community."²⁸ We agree with PTCB's argument that because KPTF-TV is a newly operational and "specialty" religious station, very little weight should be given to its viewership.²⁹

15. In addition to addressing the statutory factors, KPTF-TV raises additional arguments. KPTF-TV admits that the Comcast Communities do not fall with its Grade B contour, but states that it is closer than the nine broadcast stations carried by Comcast, none of which places a Grade B contour over the Comcast Communities.³⁰ Comcast admits that Tucumcari is in a remote area and does not receive any off-air signals from full power television stations. Comcast carries signals of stations licensed in Albuquerque, New Mexico and Amarillo, Texas, but notes that these stations have historically been carried in the Comcast Communities, provide programming of local interest, are not licensed to KPTF-TV's community, and do not broadcast from the same transmitter as KPTF-TV.³¹ Comcast disputes that KPTF-TV is entitled to carriage on Comcast's Tucumcari systems because Comcast carries other stations that do not provide a Grade B signal. We reject KPTF-TV's argument because, under our rules, Comcast is free to carry any station. The fact that it may carry other market stations that do not provide a Grade B contour over the Comcast Communities does not prevent Comcast from exercising its statutory right to seek market modification in this case. Moreover, the information provided by KPTF-TV indicates that only four of the nine broadcast stations are licensed to the Amarillo DMA, and those four are licensed to the core of the Amarillo DMA, far removed from KPTF-TV's city of license, and have been carried for many years.³² In instances such as here, where a request for modification to exclude an otherwise eligible station is granted, that station loses its must carry rights with respect to the particular cable system requesting the modification.

16. KPTF-TV also claims that Comcast is discriminating "against the carriage of broadcast station signals in favor of non-broadcast cable program services."³³ We reject KPTF-TV's allegation of discrimination against broadcast stations. While it is true that Section 76.56(b)(2) of the Commission's rules requires a cable system to set aside one-third of its channel capacity for the carriage of must carry signals, there is no restriction on a cable operator using channel space not occupied by a must carry channel for alternative programming.

17. Finally, we reject KPTF-TV's request that it be given broadcast priority as a religious station, because the must carry rules are content neutral. Carriage cannot be granted or denied based solely on factors related to the type of programming that a particular station carries.³⁴

18. The use of DMA market areas is intended "to ensure that television stations be carried in

²⁷Comcast Petition at 6.

²⁸47 U.S.C. §534(h)(1)(C).

²⁹PTCB Opposition at 3 - 4.

³⁰*Id.* at 8.

³¹Comcast Reply at 20.

³²PTCB Opposition at 8.

³³*Id.* at 10.

³⁴*See Comcast Cablevision of New Mexico, Inc.* 16 FCC Rcd 12440 (2001).

the areas which they service and which form their economic market.”³⁵ Changes in these market areas are sometimes warranted “to better effectuate the purposes” of the mandatory carriage requirements.³⁶ In light of the evidence presented here regarding lack of historic carriage, lack of Grade B coverage, significant geographic distance between the station and the Comcast Communities, and lack of coverage or other local service to the Comcast Communities, we conclude that deletion of the Comcast Communities from KPTF-TV’s market for mandatory carriage purposes fulfills the purposes of Section 614 of the Communications Act. We thus grant Comcast’s modification request.

IV. ORDERING CLAUSES

19. Accordingly, **IT IS ORDERED**, pursuant to Section 614(h) of the Communications Act of 1934, as amended (47 U.S.C. §534) and Section 76.59 of the Commission’s rules (47 C.F.R. §76.59), the captioned petition for special relief (CSR-5868-A) filed by Comcast Cablevision Corporation, LLC **IS GRANTED**.

20. This action is taken by the Chief, Policy Division, Media Bureau, pursuant to authority delegated by Section 0.283 of the Commission’s rules.³⁷

FEDERAL COMMUNICATIONS COMMISSION

Mary Beth Murphy
Chief, Policy Division
Media Bureau

³⁵ H.R. Rep. 102-628, 102d Cong., 2d Sess. 97-98 (1992).

³⁶ 47 U.S.C. Section 534(h).

³⁷ 47 C.F.R. §0.283.